

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY TAIPEI

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E.O. 11652: GDS

TAGS: EGEN, TW

SUBJECT: RIGHTS OF ROC NATIONALS TO OBTAIN MORTGAGES
IN THE UNITED STATES

REF: TAIPEI 1949

1. STATE LAW GOVERNS REAL PROPERTY IN VIRTUALLY ALL RESPECTS AND VARIES CONSIDERABLY FROM STATE TO STATE. DEPARTMENT DOES NOT HAVE RESOURCES TO RESEARCH LAWS OF ALL FIFTY STATES. SO FAR AS WE CAN ASCERTAIN, HOWEVER, PROBLEM IS NOT LAWS WHICH DIRECTLY RESTRICT THE RIGHT OF ALIENS TO OBTAIN MORTGAGES, BUT WHETHER ALIENS ARE ALLOWED TO HOLD REAL PROPERTY IN THE FIRST PLACE.

2. A NUMBER OF STATES STILL HAVE LAWS ON THE BOOKS WHICH RESTRICT THE RIGHT OF ALIENS TO OWN LAND, PRIMARILY AGRICULTURAL LAND, IN CERTAIN RESPECTS. (A 1975 DEPARTMENT OF AGRICULTURE STUDY FOUND TWENTY STATES WITH SOME SORT OF STATUTORY RESTRICTION, TWELVE OF THEM QUOTE MAJOR UNQUOTE.) SOME PROHIBIT ALIENS FROM HOLDING MORE THAN A FIXED ACRE-
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AGE. OTHERS PERMIT ONLY RESIDENT ALIENS TO HOLD LAND -- IN SOME CASES, ONLY THOSE IN THE PROCESS OF GETTING CITIZENSHIP. THE STATUS OF ALL SUCH LAWS IS VERY UNCERTAIN. TWO STATE COURTS HAVE FOUND THAT CERTAIN RESTRICTIONS ON THE RIGHTS OF ALIENS TO OWN LAND VIOLATE THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT (CALIFORNIA AND OREGON). THE SUPREME COURT HAS NEVER FACED THE ISSUE

SQUARELY, BUT ITS RECENT HOLDINGS STRONGLY SUGGEST THAT IT WOULD DISAPPROVE OF MANY SUCH RESTRICTIONS. THE VARIATION OF SUCH RESTRICTIONS, HOWEVER, IS SO GREAT THAT IT IS SIMPLY NOT POSSIBLE TO SAY THAT ALL OF THEM WOULD NECESSARILY BE HELD INVALID.

3. THERE ARE SEPARATE LEGAL CONSIDERATIONS ON THE RIGHT OF CORPORATIONS, AND ALIEN CORPORATIONS IN PARTICULAR, TO OWN AGRICULTURAL LAND. THE 1975 USDA STUDY FOUND 13 STATES WITH RESTRICTIONS OF ONE SORT OR ANOTHER ON THE RIGHT OF ALIEN CORPORATIONS TO OWN AGRICULTURAL LAND.

4. THE FCN TREATY WITH THE ROC REFLECTS THESE DIFFICULTIES OF STATE/FEDERAL LAW. THUS, ARTICLE II, PARA 2 PERMITS NATIONALS OF EITHER PARTY IN THE TERRITORY OF THE OTHER TO QUOTE ACQUIRE, HOLD, ERECT, OR LEASE, AND OCCUPY APPROPRIATE BUILDINGS UNQUOTE, BUT ONLY QUOTE TO LEASE APPROPRIATE LANDS. . . . UNQUOTE. ARTICLE III, PARA 3, IS SIMILAR WITH RESPECT TO CORPORATIONS. THE SPECIAL CONCERN WITH THE U.S. FEDERAL GOVERNMENT'S LEGAL ABILITY TO ACCORD BY TREATY A RIGHT TO FOREIGN NATIONALS TO ENGAGE IN AGRICULTURE IS REFLECTED IN THE CAVEAT OF PARA 6 OF THE PROTOCOL TO THE FCN.

5. THE ABOVE PERTAINS TO THE RIGHT OF AN ROC NATIONAL TO BE A MORTGAGOR IN THE U.S., WHICH WE INFER FROM PARA 1 OF REFTTEL IS THE PROBLEM POSED BY THE RECENT CIRCULAR OF THE MINISTRY OF THE INTERIOR. PARA 2 OF REFTTEL, HOWEVER, SUGGESTS THAT THE CONVERSE IS ALSO A PROBLEM SINCE UNCLASSIFIED

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IT SPEAKS OF INFORMING U.S. BANKS WHICH HOLD MORTGAGES (I.E., ARE MORTGAGEES) FOR ROC COMPANIES. THE RIGHT OF ROC BRANCH BANKS IN THE U.S. TO ACT AS MORTGAGEES WOULD BE GOVERNED BY STATE BANKING LAWS, WHICH THE DEPARTMENT IS UNABLE FULLY TO RESEARCH.

6. IF RECIPROCITY IS THE ONLY ISSUE HERE, IT MIGHT BE POSSIBLE FOR ROC TO LOOK TO THE LAW OF THE STATE OF WHICH A PARTICULAR U.S. NATIONAL IS A CITIZEN OR IN WHICH A PARTICULAR CORPORATION IS INCORPORATED (DELAWARE, FOR EXAMPLE, IS LISTED AS HAVING NO RESTRICTIONS IN THE 1975 USDA STUDY AND NEW JERSEY AS ONLY QUOTE MINOR UNQUOTE.)

7. DEPARTMENT WOULD SUGGEST THAT EMBASSY DISCUSS THIS PROBLEM WITH U.S. COMPANIES LIKELY TO BE ADVERSELY AFFECTED; THEIR PRIVATE COUNSEL MAY BE ABLE BETTER TO RESEARCH THIS COMPLEX AREA. EMBASSY MAY ALSO WISH TO DISCUSS PROBLEM INFORMALLY WITH MINISTRY OF INTERIOR. VANCE

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